

## REMARKS

Reconsideration of the present application is respectfully requested. Claims 18, 19, 22-24 and 26 have been cancelled without prejudice or disclaimer. Claims 1, 6, 12 and 25 have been amended. Claims 1-17, 20, 21 and 25 remain pending in this application.

Applicants received a Notice of Non-Compliant Amendment mailed April 21, 2006, and response herein accordingly.

The present application Serial No. 10/667,952 was filed by the attorneys of record on September 22, 2003, along with application Serial No. 10/668,036, now U.S. Patent No. 6,945,920, entitled "Adjustable Balancing Board", both sharing a common assignee. The '036 application was previously, and the current '952 application is being currently, examined by Examiner Lori Baker Amerson. In the prosecution of the previous '036 application, the Examiner acknowledged the error by the PTO's new application receiving office in switching the drawing figures between the '036 application and the present '952 application. Corrected drawing figures 1-9 were filed in the present '952 application on February 11, 2004.

### Drawing Objections

The drawings were objected to as failing to comply with 37 CFR 1.84(p)(5) because reference numerals 200 and 202 mentioned in the description were not included. Looking to the corrected drawings figures 1-9 filed February 11, 2004, the reference numerals 200 and 202 are present in figure 8.

The drawings were also objected to as failing to comply with 37 CFR 1.84(p)(5) because they included references numerals 27, 74, 58, 54, 50, 66, 76, 72, 78, 60, 56, 83, 64, 82, 68 and 52. The corrected drawings figures 1-9 do not include these reference numerals.

The drawings were also objected to as failing to comply with 37 CFR 1.84(p)(4) because the reference numeral 24 was used to designate both one roof base edge on pg. 6, para. 0025, ln. 6, and opposed footings on pg. 6, para. 0023, ln. 3. In response, paragraph 0025 of the specification has been amended to correctly identify the footings 24. Support for this amendment is found in other portions of the specification where the footings 24 are described, and in FIG. 4 where the bracing ribs 34 are shown to extend proximal to the opposed footings 24. It is respectfully submitted that no new matter has been added with this amendment to the specification.

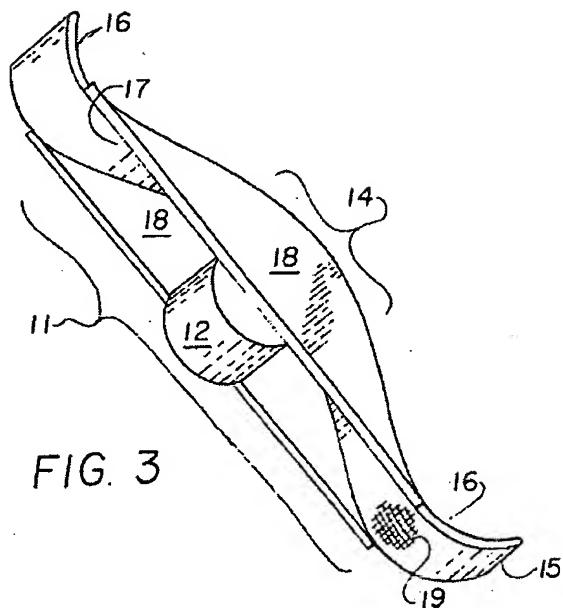
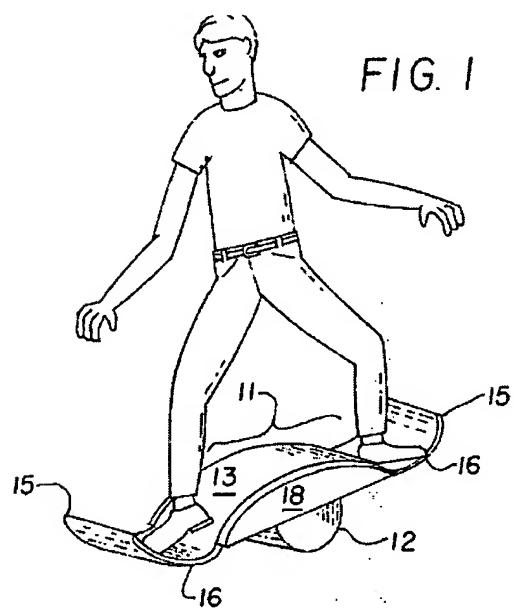
Accordingly, it is respectfully submitted that the drawings of record are in compliance with 37 CFR 1.84(p)(4-5).

#### Claim Rejections

Amendments have been made to claims 1, 6 and 12 to correct various informalities, including problems with antecedent basis. Additionally, independent claim 12 has been amended to incorporate the limitations of objected to but otherwise held allowable claim 18, as will be further explained below.

Claims 1, 5, 8-14, 17, 20-21 and 25-26, were rejected under 35 U.S.C. 102(b) as being anticipated by England (U.S. 3,895,794). The England patent discloses a balancing board device employing a fulcrum roller 12 for contacting a surface that is confined within a cavity formed by a protuberant center portion 14 of a non-linear balancing board 13. The roller 12 contacts a concave undersurface 17 of the board 13 and provides a pivot point about which a user must balance as they stand on foot positioning trenches 16 disposed at opposite longitudinal ends of the center portion 14 of the board 13. The parallel sidewalls 18 confine the roller 12 beneath

the board 13 and keep the roller aligned with respect to the undersurface 17. Figures 1 and 3 of the England Patent are reproduced below.



On the other hand, the Applicant's invention provides balancing objects for improving a user's balance and proprioception when placed directly upon a generally flat or horizontal surface. The balancing object includes an arcuate roof 14 extending upwardly from opposed footings 24 and having lateral side regions 18 from which a pair of sidewalls 16 extend generally downwardly to define an enclosed space. The sidewalls 16 are non-parallel, and in one embodiment have a concave profile extending laterally towards one another. As can be seen, no roller or other fulcrum-type element is employed with the balancing object of the present application. Instead, the user stands on the balancing object with opposed footings 24 and sidewall base edges 28 resting upon a horizontal surface 100. Figures 2 and 3 of the present application are reproduced below.

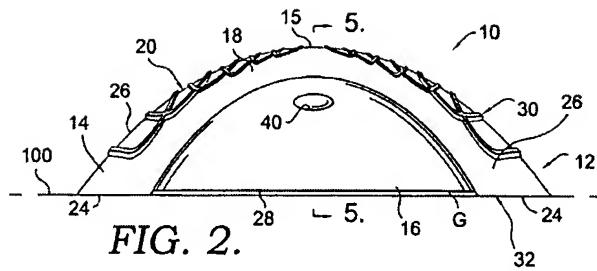


FIG. 2.

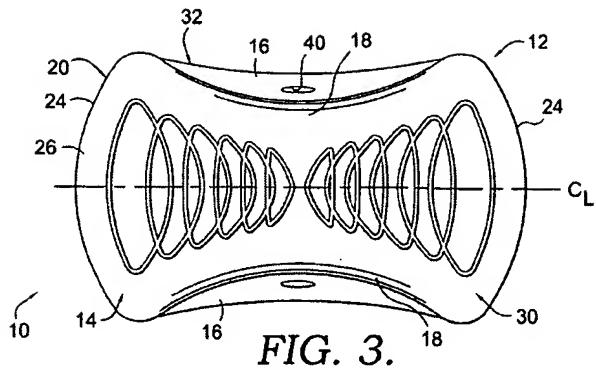


FIG. 3.

An inner surface of the sidewalls 16 of the balancing device may also be formed with an emboss 44, with the outer surface of the sidewalls 16 formed with a corresponding deboss 40 configured to matingly receive the emboss 44 of another balancing device. This enables multiple balancing devices to be securely stacked together, as seen in figures 6 and 7.

Looking to the independent claims 1, 12, and 25 of the present application, it is respectfully submitted that the England patent does not disclose all of the limitation of each claim.

Among other things, amended claim 1 requires an arcuate roof extending upwardly from opposed footings to an apex and having opposed lateral side regions, as well as a pair of sidewalls extending downwardly from the lateral side regions of the arcuate roof and being formed with a concave profile, such that the sidewalls extend laterally towards one another to define with the arcuate roof an enclosed space. With the England patent, the balancing board 13 has a roof 14 and parallel, planar member sidewalls 18. Thus, sidewalls 18 are not formed with a concave profile that would cause such sidewalls to curve inwardly towards one another. The sidewalls 18 of the invention of the England patent are necessarily flat and parallel in order to properly contain the cylindrical roller fulcrum 12 and direct its rolling motion longitudinally

along the underside 17, 19 of the protuberant center portion 14 of the balancing board 13, as can be seen in FIG. 3.

As such, the England patent does not disclose all of the limitations as claimed, and therefore does not anticipate independent claim 1. Accordingly, withdrawal of the rejection of claim 1 under 35 U.S.C. 102(b) as being anticipated by England is respectfully requested. Claims 5 and 8-11 depend either directly or indirectly from claim 1, and include all of the limitations of claim 1. Therefore, as claim 1 is now believed to be allowable over England, claims 5 and 8-11 are also allowable, and withdrawal of the rejection of claims 5 and 8-11 under 35 U.S.C. 102(b) as being anticipated by England is respectfully requested.

With respect to the rejection of independent claim 12 under 35 U.S.C. 102(b) as being anticipated by England, this claim has now been amended to include all of the limitations of dependent claim 18, which was objected to but otherwise held allowable if rewritten to include all base claim and intervening claim limitations. Therefore, it is believed that claim 12 is in allowable form.

Furthermore, claim 12 requires the sidewalls extending from the arcuate roof to be non-parallel. This is in contrast to the England patent, where the sidewalls 18 are necessarily flat and parallel in order to properly contain the cylindrical roller fulcrum 12 and direct its rolling motion longitudinally along the underside 17, 19 of the protuberant center portion 14 of the balancing board 13.

Accordingly, withdrawal of the rejection of claim 12 under 35 U.S.C. 102(b) as being anticipated by England is respectfully requested. Claims 13, 14, 17, 20 and 21 depend either directly or indirectly from claim 12, and include all of the limitations of claim 12. Therefore, as claim 12 is now believed to be allowable over England, claims 13, 14, 17, 20 and

21 are also allowable, and withdrawal of the rejection of claims 13, 14, 17, 20 and 21 under 35 U.S.C. 102(b) as being anticipated by England is respectfully requested.

With respect to the rejection of independent claim 25 under 35 U.S.C. 102(b) as being anticipated by England, claim 25 requires, among other things, an arcuate roof extending upwardly from opposed footings to an apex and having opposed lateral side regions, as well as a pair of sidewalls extending downwardly from the lateral side regions of the arcuate roof to define with the roof an enclosed space, wherein the inner and outer surfaces of the sidewalls have embosses and debosses configured to matingly receive the corresponding feature of another balancing device for securing a pair of balancing devices together. See in particular figures 5-7 of the present application. The England patent does not disclose or suggest such a feature. There are no embosses or debosses disposed on the sidewalls 18 for securing multiple balancing boards together. The claimed limitation is wholly absent in the England patent.

As such, the England patent does not anticipate independent claim 25. Accordingly, withdrawal of the rejection of claim 25 under 35 U.S.C. 102(b) as being anticipated by England is respectfully requested.

Claims 2, 4, 15 and 22-24 were rejected under 35 U.S.C. 103(a) as being unpatentable over the England patent as applied to claim 1, and further in view of the Larson patent (U.S. 3,188,087). The Examiner stated that the England patent discloses all of the limitations of the claimed invention except for a frictional surface and raised ridges, features which are taught in the Larson patent. Therefore, it would have been obvious to one having ordinary skill in the art to include a frictional surface and ridges on an exercise device to prevent sliding.

Claims 22-24 have now been cancelled, and the rejection of these claims is considered moot. Turning to claims 2, 4 and 15, it is respectfully submitted that whether or not it is obvious to include a frictional surface and ridges on an exercise device generally (such as frictional surface in col. 2, line 26, and raised ridges 33, of Larson) the England patent and the Larson patent, whether taken singularly or in combination, do not teach or suggest the features of independent base claims 1 and 12, from which claims 2, 4, 15 depend either directly or indirectly. Thus, if claims 1 and 12 are not infringed, then dependent claims 2, 4 and 15 are likewise not infringed.

Specifically, England and Larson do not teach a balancing device having: (1) an arcuate roof extending upwardly from opposed footings to an apex and having opposed lateral side regions, and (2) a pair of sidewalls extending downwardly from the lateral side regions of the arcuate roof to combine with the roof in defining an enclosed space, the sidewalls being non-parallel with one another or otherwise formed with concave profile such that the sidewalls extend laterally towards one another.

Accordingly, withdrawal of the rejection of claims 2, 4 and 15 under 35 U.S.C. 103(a) as being unpatentable over the England patent in view of the Larson patent is respectfully requested.

Claims 3 and 16 were rejected under 35 U.S.C. 103(a) as being unpatentable over the England patent as applied to claims 1 and 15, and further in view of the Yeh patent (U.S. 5,256,127). The Examiner stated that the England patent discloses all of the limitations of the claimed invention except for an overmold formed from rubber or plastic, features which are taught in the Yeh patent. Therefore, it would have been obvious to one having ordinary skill in

the art to form an overmold from a durable material such as plastic to prevent wear and tear on the device during extended use.

Similar to claims 2, 4 and 15 discussed above, it is respectfully submitted that whether or not it is obvious to include an overmold on an exercise device generally (such as the plastic overmold in col. 2, line 11, of Yeh) the England patent and the Yeh patent, whether taken singularly or in combination, do not teach or suggest the features of independent base claims 1 and 12, from which claims 3 and 16 depend either directly or indirectly. Thus, if claims 1 and 12 are not infringed, then dependent claims 3 and 16 are likewise not infringed.

Specifically, England and Yeh do not teach a balancing device having: (1) an arcuate roof extending upwardly from opposed footings to an apex and having opposed lateral side regions, and (2) a pair of sidewalls extending downwardly from the lateral side regions of the arcuate roof to combine with the roof in defining an enclosed space, the sidewalls being non-parallel with one another or otherwise formed with concave profile such that the sidewalls extend laterally towards one another.

Accordingly, withdrawal of the rejection of claims 3 and 16 under 35 U.S.C. 103(a) as being unpatentable over the England patent in view of the Yeh patent is respectfully requested.

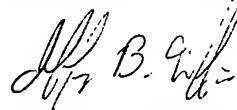
Claims 6 and 7 were objected to as being dependent upon a rejected base claim, but otherwise allowable if rewritten to include all base claim and intervening claim limitations. Claims 6 and 7 depend either directly or indirectly from claim 1, which is now believed to be allowable over the references of record. Therefore, it is respectfully requested that claims 6 and 7 be found allowable in current claim form.

Conclusion

Based on the foregoing, it is submitted that the Applicant's invention as defined by claims 1-17, 20, 21 and 25 is patentable over the references of record. Issuance of a Notice of Allowance is respectfully requested.

The Commissioner is hereby authorized to charge any additional fees that may be required, or credit any overpayment, to Deposit Account No. 19-2112.

Respectfully submitted,



Jeffrey B. Williams  
Reg. No. 43,269

Shook Hardy & Bacon  
2555 Grand Blvd.  
Kansas City, MO 64108  
(816) 474-6550  
(816) 421-5547 – fax

**Customer No. 05251**